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MICHAEL RODAK, JR.,

In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2016

LOUIS ARANDA,

Petitioner,

vs.

SUPREME COURT OF THE STATE OF ARIZONA AND THE COMMITTEE ON EXAMINATIONS AND ADMISSIONS TO THE STATE BAR OF ARIZONA,

Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Arizona and the Committee on Examinations and Admissions to the State Bar of Arizona

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OPINION BELOW

On December 18, 1973, and March 12, 1974, Orders were entered by the Supreme Court of Arizona, denying Petitioner's request that he be admitted to the practice of law in the State of Arizona. On April 16, 1974, an Order was entered by the Supreme Court of Arizona, denying Petitioner's Motion for Re-hearing. No written Opinion was issued in connection with any of these Orders.

JURISDICTION

The Respondents do not question the jurisdiction of this Court to issue a Writ of Certiorari to the Supreme Court of the State of Arizona in an appropriate case under Section 1257(3) of Title 28 U.S.C.

The Committee on Examinations and Admissions of the Supreme Court of Arizona (Committee), named by Petitioner as the Committee on Examinations and Admissions to the State Bar of Arizona, is not a proper party to this Petition. Its sole function is to examine applicants and recommend to the Arizona Supreme Court for admission to practice those applicants who are considered by the Committee to have the necessary qualifications and to fulfill the requirements prescribed by Rule 28(c) of the Rules of the Supreme Court of Arizona. The Supreme Court of Arizona has the ultimate responsibility for the admission to the practice of law or the disbarment of a person licensed to practice law. *In re Sullivan,* 64 Ariz. 337, 170 P.2d 614 (1946); *In re Lewkowitz,* 70 Ariz. 325, 220 P.2d 229 (1950); *Application of Levine,* 97 Ariz. 88, 397 P.2d 205 (1965); and Rule 28(a), Rules of the Supreme Court of Arizona.

QUESTIONS PRESENTED

1. Has Petitioner demonstrated that any action on the part of the Supreme Court of the State of Arizona or the Committee on Examinations and Admissions of the Supreme Court of Arizona has in any way deprived him of due process of law or equal protection of the laws in the grading of the examination paper written by him in the bar examination administered by the Committee in July, 1973?

2. Has Petitioner adequately demonstrated that he possesses sufficient knowledge of the law, in the bar examination written by him in July, 1973, to be entitled to be licensed to practice law in the State of Arizona?

STATUTE AND RULES INVOLVED

Rule 28(a) of the Rules of the Supreme Court of the State of Arizona provides in applicable part:

> "The examination and admission of applicants for membership in the State Bar of Arizona shall conform to this Rule. For such purpose, a committee on examinations and admissions consisting of seven active members of the state bar shall be appointed by this court upon recommendation of the board of governors of the state bar which shall recommend at least three members of the state bar for each appointment to be made. . . . The committee shall examine applicants and recommend to this Court for admission to practice applicants who are found by the committee to have the necessary qualifications and to fulfill the requirements prescribed by the rules of the board of governors as approved by this court respecting examinations and admissions heretofore adopted and made effective May 25, 1948, and as amended effective February 1, 1954, and such other rules as hereafter may be adopted. The court will then consider the recommendations and either grant or deny admission. Amended, effective Sept. 15, 1970."

Rule 28(a) and 28(c) of the Rules of the Supreme Court of Arizona are printed in full as a part of Appendix A to the Petition for a Writ of Certiorari.

STATEMENT

The clerk of the Supreme Court of the State of Arizona has transmitted to this Court three separate files of Petitions brought by Petitioner in the Supreme Court of Arizona. These are numbered by the Supreme Court of Arizona as SB-47, SB 47-2, and 11339. In addition, the clerk of the Supreme Court of the State of Arizona has transmitted to this Court the Committee file on Petitioner, which was lodged with the Supreme Court at the time the Committee

filed its Response in SB-47. The facts which Respondents will hereafter allude to are all contained in the four files identified above.

Petitioner has on two occasions failed the bar examination administered by the Committee on Examinations and Admissions of the Supreme Court of Arizona. These examinations were conducted in February, 1973, and July, 1973. After being advised by the Committee that he had failed to receive a satisfactory grade on the February, 1973, examination, Petitioner applied for, was granted permission to write, and did write the July, 1973 bar examination.

After being advised by the Committee that he had failed to receive a satisfactory grade on the July, 1973, bar examination, Petitioner, on October 19, 1973, filed in the Arizona Supreme Court a Petition for Special Action and Order to Show Cause or Alternatively Request for Review Pursuant to Rule 28 (c) (E) (C). On October 30, 1973, after a Response had been filed by the Committee, and after hearing oral argument, the Supreme Court of Arizona refused to accept jurisdiction of the Petition for Special Action and took under advisement the Petition for Review Under Rule 28(c) of the Rules of the Supreme Court of Arizona.

On November 6, 1973, the Supreme Court of Arizona entered a Minute Order, directing the Committee to file a Supplemental Response, "Specifically setting forth the Committee's position on supplying Petitioners with questions and answers on multi-state bar examination and method of grading entire examination." This Response was filed by the Committee on December 6, 1973, and on December 18, 1973 the Supreme Court of Arizona entered the following Order, in cause No. 11339:

"The following Order having been entered by the Supreme Court this date,

"IT IS ORDERED that the Supreme Court Committee on Examinations and Admissions certify to the Supreme Court for admission to the State Bar of Arizona, the names of all applicants not heretofore admitted to practice who have attained passing grades on the Essay and Legal Ethics portions of the bar examination given July 25, 26 and 27, 1973."

Now therefore,

"IT IS ORDERED: Petition for Review by the Supreme Court=DENIED."

Petitioner, on February 15, 1973, filed a Petition for Special Action and Order to Show Cause in the Supreme Court raising essentially the same matters that had been raised in his previous Petition. Petitioner, on February 19, 1973, filed a Petition for Review by the Supreme Court, again raising essentially the same matters as raised in his initial Petition. On March 12, 1974, Orders were entered by the Supreme Court of the State of Arizona denying the relief sought in each of these Petitions.

The July, 1973 bar examination administered by the Committee, was the first bar examination in the State of Arizona in which the multi-state bar examination, sponsored by the National Conference of Bar Examiners, was used. On January 24, 1973, following preliminary discussions by the Committee concerning the use of the multi-state bar examination, a meeting was held between the members of the Committee and the members of the Supreme Court of Arizona to discuss the use of the multi-state bar examination in the State of Arizona. At this meeting detailed

explanations of the examination were presented, and following this meeting the Supreme Court ordered the use of the multi-state bar examination in July, 1973, and so instructed the Committee. At a later meeting between the members of the Committee and the members of the Supreme Court of Arizona, the possible grading systems recommended by the National Conference of Bar Examiners for use in grading the multi-state bar examination were discussed, and the Supreme Court directed the Committee to use the grading system that was, in fact, used in connection with the July, 1973, bar examination. The grading system that was applied to the examination papers of Petitioner was exactly the same as that applied to all other applicants who wrote the July, 1973, examination.

The multi-state bar examination, as administered by the Committee in July, 1973, was corrected by computer by the Educational Testing Service, Princeton, New Jersey. In the bar examination administered by the Committee in July, 1973, three-sevenths (3/7ths) of the examination consisted of the multi-state bar examination, and four-sevenths (4/7ths) consisted of the traditional essay-type examination historically used in Arizona. The grades of the multi-state bar examination and the essay examination were correlated by the use of the Standard Deviation Method. Of the three correlation methods proposed by the National Conference of Bar Examiners, the Standard Deviation Method is the one most highly recommended. The calculations required in the application of the Standard Deviation Method, in connection with the July, 1973, bar examination administered by the Committee, were performed by computer under the supervision of the National Conference of Bar Examiners.

ARGUMENT

The December 18, 1973, Order of the Supreme Court of Arizona, which directed the Committee to, ". . . certify to the Supreme Court for admission to the State Bar of Arizona, the names of all applicants not heretofore admitted to practice who have attained passing grades on the essay and legal ethics portions of the bar examination given July 25, 26, and 27, 1973," resulted in two classes of applicants being admitted: first, those who had obtained a combined grade of 70 or better, when the multi-state bar examination and essay examination grades were correlated; and second, those who had received a grade of 70 or better on the essay portion only. Petitioner did not receive a passing grade using either of these two methods, and his contention at pages 5 and 6 of his Petition, that persons who received lower grades than he have been admitted to practice, is inaccurate and misleading. As stated previously, no applicant who received less than a combined grade of 70 or better, or a grade of 70 or better on the essay portion of the examination, was admitted to practice in the State of Arizona. Petitioner's combined score on the July, 1973, examination was 64.83; and his score on the essay portion only was 69.4, and as is obvious, Petitioner did not fit into either category of those applicants who were admitted. Petitioner argues to this Court that all he wants is, "Equal protection of the laws," but it is submitted that, in fact, he wants unequal treatment in that he is asking this Court to create a new class of applicants, i.e., those who have failed to receive a passing grade by the use of either of the two methods of calculating grades used in connection with the July, 1973, Arizona bar examination.

Petitioner has had due process in connection with the July, 1973, bar examination. Rule 28 (c) XII E of the Rules

of the Supreme Court of Arizona provides for, "Proceedings Upon Failure to Receive Satisfactory Grade." Petitioner proceeded under the cited Rule, and, in fact, his papers were reviewed by the Committee in strict compliance with the "Proceedings Upon Failure to Receive Satisfactory Grade."

Application of Peterson, Alaska, 459 P.2d 703 (1969), cited by Petitioner, is inapplicable to the facts of this case. Petitioner was not furnished any "model answers" by the Committee because, in fact, none existed for the July, 1973, examination or any previous or subsequent examination. The Committee, historically, has not prepared such model answers and, therefore, could not, of course, make them available to Petitioner. The logic of the opinion in *Application of Peterson,* is that inasmuch as model answers had been prepared and used by the Alaska Committee it would be unfair to refuse to allow him to see them and compare them with his answers. In effect, Peterson had been denied any appeal whatsoever from his failure to receive a satisfactory grade. As pointed out previously, such is not the situation of Petitioner in that he was entitled to a review of his papers and, in fact, received such a review.

Petitioner's statement, at Page 16 of his Petition, that, "Often there is no right to appeal a failing grade; no right to review information as to subject areas passed and failed; arbitrary limitation on the number of times one may sit for the examination, and in many instances, one is required to return to law school to take a specified number of subject hours with no indication as to where one's weakness lies; . . .", has absolutely no application to this case, because none of those situations exists in the State of Arizona. Petitioner's contention that, "Great doubt exists, that the examinations are professionally developed by per-

sons expert in techniques of test construction," is without support in this record.

Respondents do not disagree in any way with the holdings in *Willner v. Committee on Character,* 373 U.S. 96 (1963), or *Schware v. Board of Examiners,* 353 U.S. 232 (1957), cited by Petitioner. Again, however, they have no application to the facts of this case. In each of the cited cases, the applicant had passed the bar examination, but was denied admission because of the appropriate committee's refusal to find good character or moral fitness to practice law. Petitioner, in this case, is complaining because he failed to receive a satisfactory grade. To quote from *Application of Peterson, Alaska,* 459 P.2d 703 (1969), at page 706: "Adoption of Appellant's position would, in our view, abolish any semblance of objective criteria and would substitute in its place rather vague and shifting standards, which dramatically increase the probabilities of ad hoc admissions."

If Petitioner's position regarding the grading of the July, 1973, bar examination administered by the Committee is adopted, then every applicant who wrote the examination is entitled to be admitted, regardless of the grade received. Such a holding would deprive the Supreme Court of Arizona of any right to protect prospective clients from incompetent lawyers.

Respondents do not intend to make light of Petitioner's earnest efforts to gain admission to the Bar. In perspective, however, the sad truth of the matter is that Petitioner is unable to demonstrate that he possesses sufficient knowledge of the law to be entitled to be licensed to practice in the State of Arizona and is now seeking admission on the basis of claimed denial of due process and deprivation of equal protection of the law, which the record does not support because neither exists.

CONCLUSION

It is respectfully submitted that Petitioner's claims of denial of due process and deprivation of equal protection of the laws are not well-founded; that there is nothing in the record to support his claims; and that his Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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